

Montana Association of Counties.

Serving Montana Counties Since 1909

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BOARD OF DIRECTORS

December 1, 2008

8:30 a.m.

**MACo Conference Room
2715 Skyway Drive
Helena, MT**

MINUTES

1. Roll Call and Introductions: President McGinley called the meeting to order. Roll call and introductions were conducted. The attendance sheet is attached.

2. Approval of Minutes: Commissioner Davey noted corrections in the September 21, 2008 and September 25, 2008 minutes. Commissioner Chilcott moved and Commissioner Ostlund seconded to approve the minutes as corrected. Motion carried.

3. Finance Report: Tom Swindle reviewed the financial statements as of September 30, 2008. Commissioner White moved and Commissioner Worrall seconded to approve the financials as presented. Motion carried.

4. Local Option Tax Proposal: Director Blattie provided the Board with a brief history of local option tax proposals. He informed the Board that MACo has supported a statewide sales tax and/or a broad local option tax for many years. MACo has been very involved in a number of bills to authorize local option sales taxes; however none have passed the legislature. A key component is the mechanism for revenue distribution.

Alec Hansen, Executive Director of the Montana League of Cities and Towns thanked the Board for the invitation to present the proposal. Mr. Hansen noted that local governments are better suited than the legislature to determine the need for a local option tax. Senator Essman has agreed to sponsor a bill. The main components of the proposal are:

- Requires a vote within the city, town or county
- The vote must be held during a general, primary or mail ballot election
- The amount of the tax cannot exceed 4%
- The proposal contains a 2% vendor allowance for administrative fees
- The tax will sunset in 10 years.

Mr. Hansen then provided some examples of the revenue sharing and distribution proposals, and clarified that the county would have the first option of either placing it on a county-wide ballot or opting out. If the city and the county approve, it would be a 50/50 revenue split. If the county opts out, and the city adopts the local option tax, the county would receive 20% of the revenue share.

The Board thanked Mr. Hansen for attending and providing the information.

5. **MACo Committee Appointments:** President McGinley reported that he had completed Committee appointments, and the list is in the Board packets, as well as on the MACo website. President McGinley thanked all of the Committee chairs for their work and assistance. He also noted that if a need arises, he may be contacting Committee chairs to ask for help with the Legislature.
6. **Council of County Officials Meeting:** Associate Director Wood provided a recap of the Council of County Officials meeting held on November 25, and provided a list of the legislative proposals being considered by elected officials associations.
7. **Legislative Update:** Director Blattie distributed and reviewed the upcoming Legislative calendar, along with the MACo internal bill tracking process and the House and Senate Committee Assignments. He also distributed and reviewed the MACo resolutions list and the progress on obtaining bill sponsors. Director Blattie noted that there are over 20 gravel pit bill drafts to date.

Discussion was held on the local option sales tax proposal. Commissioner Brooker recommended that Commissioners meet with their Mayors. Commissioner Tempel expressed concern that the regional proposal will not help eastern counties.

Director Blattie informed the Board that the new language included in Reauthorization of PILT payments will require a statutory change for the distribution of the funds from the state. He requested permission from the board to pursue legislation. Commissioner Brooker moved and Commissioner Johnson seconded to authorize Director Blattie to pursue the necessary legislation. Motion carried.

8. **Strategic Planning Session:** President McGinley informed the Board that the MACo Board of Directors had conducted a strategic planning session in January of 2006, where they established goals and objectives for the Association. In reviewing those goals, it was found that they had either been met, or it had been determined they were not achievable. The purpose of today's session is to review the goals of the Association and develop new objectives. President McGinley introduced Dan Clark, who will be facilitating the planning session.

The Board reviewed the Association by-laws, and the mission statement and objectives contained in the bylaws. They then reviewed the 2006 Strategic Planning Summary and reviewed the service definitions, goals and objectives established at that time.

Mr. Clark then had the Board break into groups to answer a series of questions regarding MACo's purpose and an evaluation of its services, and to develop future goals and objectives. Director Blattie and Associate Director Wood were excused for this portion of the meeting.


Directors Blattie and Wood rejoined the meeting following the work session. The Board was provided a breakdown of MACo staff FTE allocations. Mr. Clark then had each group present their proposed goals and objectives. Mr. Clark will compile the responses and forward them to Director Blattie for distribution to the Board.

9. Other Business:


- a. **Upcoming Meetings and Conferences:** Director Blattie reviewed the Elected Officials Training, Loss Control and Midwinter conferences. He distributed an email as an example of the number of requests we get from state and outside agencies to present to our members at conferences.
- b. **Part Time Maintenance Position Proposal:** Director Blattie noted that he may be presenting a proposal to the Board at the February meeting for a part-time maintenance position. There may be some cost savings with hiring someone rather than paying for the janitorial, snow removal, electrical, plumbing, etc. through outside contractors.
- c. **Northwestern Energy Protested Taxes:** It was discussed that information had been received that a settlement agreement had been reached between Northwestern Energy and the Department of Revenue on their protested taxes.
- d. **NACo Clean Water Restoration Act:** Commissioner Davey informed the Board that their county would be sending a letter to support NACo's position on the Clean Water Restoration Act, and urged all other counties to do the same.

There being no further business to come before the Board, the meeting was adjourned.

Approved this 9th day of February, 2009



Michael J. McGinley, President



L. Harold Blattie, Secretary

Attendance Log

Officers

☒ Mike McGinley, President
☒ Carl Seilstad, 1st Vice President
☒ John Ostlund, 2nd Vice President
☐ Allan Underdal, Fiscal Officer
☒ Greg Chilcott, Urban Representative
☒ Cyndi Johnson, Past President

District Chairs

☐ Richard Dunbar, District #1
☐ Mark Rehbein, District #2
☒ Donald Reiger, District #3
☒ Harvey Worrall, District #4
☒ Arnie Gettel, District #5
☐ Jerome Kolar, District #6
☒ Maureen Davey, District #7
☒ Andy Hunthausen, District #8

☒ Steve White, District #9
☒ Carol Brooker, District #10
☒ Carlotta Grandstaff, District #11
☒ Tom Rice, District #12

Association Representatives

☐ Leo Gallagher, County Attorneys
☒ Amanda Kelly, Clerk and Recorders
☒ Marilyn Craft, Clerks of Court
☐ Steve Immenschuh, Coroners
☒ Gary A. Olsen, Magistrates
☐ T. Gregory Hintz,
Sheriff & Peace Officers
☒ Pam Shelton, Treasurers
☒ Diane Inbody,
School Superintendents

Others Present: Harold Blattie, MACo Executive Director; Sheryl Wood, MACo Associate Director; Tom Swindle, MACo Finance Officer; Russ Tempel, Vice-Chair, District #4; Dan Clark, Executive Director, MSU Local Government Center; Alec Hansen, Executive Director, Montana League of Cities and Towns.

BUSINESS ASSOCIATE AGREEMENT
BETWEEN

Montana Association of Counties Health Care Trust

AND

Montana Association of Counties

I. PREAMBLE

Pursuant to the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, the Standards for Privacy of Individually Identifiable Health Information, 45 CFR '164.500 *et seq.*, (hereinafter the HIPAA Privacy Rule), the Montana Association of Counties Health Care Trust, hereinafter referred to as MACo HCT, 2715 Skyway Drive, Helena, MT (Covered Entity) and the Montana Association of Counties, herein after referred to as MACO, 2715 Skyway Drive, Helena, MT. (Business Associate) (jointly the Parties) wish to enter into this Agreement that addresses the requirements of the HIPAA Privacy Rule with respect to business associates, as that term is defined in the HIPAA Privacy Rule.

Specifically, this Agreement is intended to ensure that the Business Associate will establish and implement appropriate safeguards (including certain administrative requirements) for Protected Health Information the Business Associate may create, receive, use, or disclose in connection with certain functions, activities or services (collectively services) to be provided by Business Associate to Covered Entity. The services to be provided by Business Associate are identified in a separate agreement between the Parties entitled Agreement and dated July 1, 2008.

The Parties acknowledge and agree that in connection with the services to be provided; Business Associate may create, receive, use or disclose Protected Health Information. As set forth in the HIPAA Privacy Rule and as used herein, Protected Health Information (PHI) is defined as individually-identifiable health information maintained or transmitted in any form or medium, including, without limitation, all information (including demographic, medical and financial information), data, documentation, and materials that relate to: (i) the past, present or future physical or mental health or condition of an individual; (ii) the provision of health care to an individual; or (iii) the past, present or future payment for the provision of health care to an individual. PHI does not include health information that has been de-identified in accordance with the standards for deidentification provided for in the HIPAA Privacy Rule.

In connection with Business Associate's creation, receipt, use or disclosure of PHI, Business Associate and Covered Entity agree as follows:

II. GENERAL TERMS

A. All capitalized terms in this Agreement shall have the meanings set forth in the HIPAA

Privacy Rule, unless otherwise defined herein.

- B. In the event of an inconsistency between the provisions of this Agreement and the mandatory terms of the HIPAA Privacy Rule, as may be expressly amended from time to time by the Department of Health and Human Services (HHS) or as a result of interpretations by HHS, a court of appropriate jurisdiction, or another agency having regulatory authority over the Parties, the interpretation of HHS, such court or regulatory agency shall prevail. In the event of a conflict among the interpretations of these entities, the conflict shall be resolved in accordance with the rules of precedence.
- C. Where provisions of this Agreement are different from those mandated by the HIPAA Privacy Rule, but are nonetheless permitted by the Rule, the provisions of the Agreement shall control.
- D. Except as expressly provided in the HIPAA Privacy Rule or this Agreement, this Agreement does not create any rights in third parties.

III. SPECIFIC REQUIREMENTS OF BUSINESS ASSOCIATE

- A. Business Associate agrees to create, receive, use or disclose PHI only in a manner consistent with this Agreement or the HIPAA Privacy Rule and only in connection with providing the services to Covered Entity identified [in the agreement dated July 1, 2008 above in this Agreement]. Accordingly, in providing services to or for the Covered Entity, Business Associate is permitted to use and disclose PHI for treatment, payment and healthcare operations in accordance with the HIPAA Privacy Rule; subject, however, to such use or disclosure including only the minimum information necessary for the stated purpose and disclosure being limited to those persons with a legitimate need to know or possess the PHI for healthcare operations, functions or purposes. Additionally, under the HIPAA Privacy Rule, Business Associate also may use or disclose PHI received by the Business Associate in its capacity as a Business Associate to the Covered Entity if:
 - 1. the use relates to: (a) the proper management and administration of the Business Associate or to carry out legal responsibilities of the Business Associate, or (b) data aggregation services relating to the health care operations of the Covered Entity; or
 - 2. the disclosure of information received in such capacity will be made in connection with a function, responsibility, or service identified in (1) (a), *and* such disclosure is required by law *or* the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and the person agrees to notify the Business Associate of any breaches of confidentiality.
- B. Business Associate shall include in all contracts with its agents or subcontractors, if such contracts involve the disclosure of PHI to the agents or subcontractors, the same restrictions and conditions on the use and disclosure of PHI that are set forth in this Agreement.

- C. Business Associate shall maintain reasonable safeguards and any security measures required by HIPAA which are necessary to ensure that PHI is not used or disclosed except as provided by this Agreement.
- D. Business Associate shall report to Covered Entity any use or disclosure of PHI that is not provided for in this Agreement and take all reasonable action to remediate and mitigate the consequences of such disclosure or use.

Business Associate acknowledges that if it fails to remediate and mitigate or cure the consequences of disclosure, the Covered Entity will do so, and Business Associate will indemnify Covered Entity for all costs and damages associated therewith.

- E. In accordance with 45 C.F.R. ' 164.524 of the HIPAA Privacy Rule, Business Associate will make available to those individuals who are subjects of PHI, their PHI in Designated Record Sets by providing the PHI to Covered Entity (who then will share the PHI with the individual), by forwarding the PHI directly to the individual, or by making the PHI available to such individual at a reasonable time and at a reasonable location.
- F. Business Associate shall make available the information necessary to provide an accounting of disclosures of PHI as provided for in 45 C.F.R. ' 164.528 of the HIPAA Privacy Rule.
- G. Business Associate shall make available PHI for amendment and incorporate or append any amendment to PHI in accordance with 45 C.F.R. ' 164.526 of the HIPAA Privacy Rule.
- H. Upon the termination or expiration of this Agreement, Business Associate agrees to return the PHI to Covered Entity, destroy the PHI (and retain no copies), or further protect the PHI if return or destruction is not feasible.
- I. Business Associate shall make available to the HHS or its agents the Business Associate's internal practices, books and records relating to the use and disclosure of PHI.
- J. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. ' 164.528 of the HIPAA Privacy Rule.
- K. Business Associate agrees to provide to Covered Entity or an Individual information collected by the Business Associate to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. ' 164.528 of the HIPAA Privacy Rule.
- L. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, Covered Entity for plan operations purposes, if such use or disclosure of PHI would not violate the HIPAA Privacy Rule if done by

Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the agreement, provided that such use or disclosure would not violate the HIPAA Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

IV. SPECIFIC REQUIREMENTS FOR THE COVERED ENTITY

- A. Covered Entity shall notify Business Associate of any limitations in its Notice of Privacy Practices of Covered Entity in accordance with 45 CFR ' 164.520 to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- C. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR ' 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- D. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by Covered Entity.

V. TERM AND TERMINATION

- A. The Term of this Agreement shall be effective as of May 15, 2005 and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section. [Term may differ.]
- B. The Parties agree that Covered Entity shall have the right to terminate this Agreement or seek other remedies if Business Associate violates a material term of this Agreement. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - 2. Immediately terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity;
 - 3. If neither termination nor cure are feasible, Covered Entity shall report the

violation to the Secretary of the Department of Health and Human Services.

C. Effect of Termination.

1. Except as provided in paragraph (2) below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon notification that the return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

IN WITNESS WHEREOF, the parties have caused this Business Associate Agreement to be executed on their behalf by their duly authorized representatives' signatures, effective as of the date first above written.

Montana Association of Counties,
Health Care Trust (MACo HCT)

Montana Association of Counties
(MACo)

BY:

NAME: Mike McGinley

TITLE: Chair, MACo HCT

BY:

NAME: L. Harold Blattie

TITLE: MACo Executive Director